

# Civil Works Project Decision Documents

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How to Get Your Decision Document Through Headquarters Review - The Real Estate Plan



# The Real Estate Plan

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Paragraph 12-16, Chapter 12, ER  
405-1-12, The Real Estate  
Handbook



# Orientation

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- Describe the purpose of the Real Estate Plan (REP) in relation to the project.
  - Describe the project for the Real Estate reviewer
  - Describe previous REP's for the project



# Description of LER (Lands, Easements and Rights of Way)

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- Account for all of the land underlying and required to support the project, whether or not it will need to be acquired or credited to the NFS.
- Provide description of land required for each project purpose and feature.
- Include land already owned by the Government and the Sponsor.



# Description of LER (Cont)

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- Show acreage, estates, number of tracts and ownerships, and estimated value.
- Break down total acreage into fee and various types and durations of easements.
- Break down acreage by Government, NFS and private ownership.



# NFS-Owned LER

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- Describe NFS-owned acreage and interest to show whether or not it is adequate for project requirements.
- Discuss any crediting issues and describe NFS views on such issues.



# Non-Standard Estates

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- Use Standard Estates where possible.
- Non-standard estates must be approved by CERE-A to assure they meet DOJ standards for use in condemnations.
- Provide justification for use of the proposed non-standard estates.
- Request approval of non-standard estates as part of document approval.



# Overlapping Existing Federal Projects

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- Interest in land provided as an item of local cooperation for a previous Federal project is not eligible for credit.
- Additional interest in the same land is eligible for credit.
- Describe all previously-provided interests that are to be included in the current project.



# Federally-Owned Land

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- Land under the jurisdiction of the Army or another Federal agency.
- Describe the acreage and interest owned by the Government.
- Provide description of the views of the local agency representatives toward use of the land for the project and issues raised by requirement for this land.



# Land within the Navigation Servitude

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- Applies within limits of Corps Sec 10 jurisdictional area. See 33 CFR Pt 329.
- Not required or eligible for credit for a Federal navigation or flood control project or other project to which a navigation nexus can be shown.
- Environment and shore protection?
- Requirements for land use restrictions?



# Map

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- An aid to understanding.
- To the extent practicable, commensurate with other elements.



# Induced Flooding

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- Can create a requirement for real estate acquisition.
- Physical Taking Analysis
- Summarize results of the Taking Analysis in the REP.



# Baseline Cost Estimate for Real Estate

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- Provides information for the project cost estimates.
- Gross Appraisal of the fair market value of lands required for the project
- PL 91-646 costs
- Incidental acquisition costs
- Contingencies



# Relocation Assistance Benefits

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- See 49 CFR Pt 24.
- Real Estate closing costs.
- Moving and reestablishment costs for persons, businesses and farms.
- Housing assistance
  - For owners.
  - For tenants
  - Last Resort Housing



# Mineral Activity

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- Surface vs subsurface interests
- Effect of outstanding mineral interests



# Sponsor's Capability and Experience

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- NFS's vary in both.
- See Appendix F of Chapter 12, ER 405-1-12 for guide for Assessment of Non-Federal Sponsor's Real Estate Acquisition Capability.



# Zoning in Lieu of Acquisition

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- Applications
- Determine whether the proposed zoning scheme would amount to a taking, for which compensation will be due.



# Schedule

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- Milestones to which district and NFS agree



# Utility or Facility Relocations

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- Relocation as payment for land vs relocations authorized by statute.
- Judicial concern for “windfall.”
- Faulty determinations can affect the accuracy of the project cost estimate and can confuse Congressional authorization
- Regulatory guidance. “Appendix Q”



# Utility or Facility Relocations (Cont.)

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- Eligibility for substitute facility
  - Project impact
  - Compensable interest
  - Public utility or facility
  - Duty to replace
  - Fair market value too difficult to determine or its application would result in an injustice to the landowner or the public.



# Utility or Facility Relocations (Cont.)

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## ■ Final vs Preliminary Attorney's Opinion of Compensability

- Difference is in the relaxation of the requirement for formal title evidence in a Preliminary Opinion.
- For a Preliminary Opinion compensable interest can be shown by evidence such as a deed or statement from the owner.
- Need for disclaimer to Congress



# HTRW

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- ER 1165-2-132, Hazardous, Toxic, and Radioactive Waste (HTRW) Guidance for Civil Works Projects (26 June 1992) (under revision)



# Landowner Attitudes

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- Support
- Apathy
- Opposition
- Contingency for condemnations



# Other Relevant Real Estate Issues

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- Material to the understanding of the real estate aspects of the project